

Remarks/Arguments:

I. Status

The Office Action dated March 8, 2006 (the “Office Action”), has been carefully reviewed. Claims 1, 2, 8, 9, 15, 16, 17 and 21-24 have been amended. Accordingly, claims 1-25 are pending in this application. Reconsideration of this application is respectfully requested.

II. 35 U.S.C. § 102 Rejection

Claims 1-3, 8-10, 15-17 and 21-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2002/0143634 to Kumar et al. (hereinafter “Kumar”). Reconsideration of these claims in view of the forgoing amendments and the following remarks is respectfully requested.

The Present Invention

The present invention comprises a system for supporting transactions billed to an account associated with a cellular telephone. A consumer selects products and presents them at a merchant’s terminal where the products are identified to the terminal in the normal manner. In one non-limiting embodiment, the total amount of the transaction, a transaction code, and a payment processing center telephone number are presented to the consumer. The consumer then places a call to the payment processing center and enters the transaction code. At or about the same time, the merchant terminal sends merchant transaction data to the payment processing center over a different communications link.

A transaction record generator at the payment processing center receives consumer transaction data and merchant transaction data and correlates the two. The consumer transaction data may include, in addition to the transaction number, cellular phone identification such as the cellular phone number, an electronic serial number, a merchant identifier, and/or the transaction amount. The merchant transaction data includes the total amount of the transaction, and may further include a merchant identification code, and or a transaction identification code. The merchant identification code may identify the retailer, the particular store, a city and state, and/or terminal identification. Once the merchant transaction data and the consumer transaction data are correlated, a transaction record is generated that includes at least some of the merchant transaction data as well as at least some of the consumer transaction data.

The transaction record generator may then query a billing platform associated with the cellular phone to obtain approval for payment of the transaction. If approved, an approval code is generated and transmitted to either the cellular phone and/or the merchant's terminal. The goods are then released to the consumer.

Kumar

Kumar discloses a wireless payment system. (Kumar at abstract). After products have been scanned, a customer gives a user identification code (User ID) to the merchant. (Kumar at paragraphs 38 and 45 and FIG. 3A step 302). The merchant uses a point of sale machine to transmit the User ID and transaction data to a Wireless Payment System (WPS) server. (Id. at paragraphs 38 and 45 and FIG. 3A steps 308 and 310). The WPS

server verifies the received data and, “[i]f the verification is successful, WPS server 20 creates a transaction record.” (Id. at paragraph 38).

Therefore, the system of Kumar generates a transaction record using information received from a merchant’s terminal. At this point in the process, no information has been passed to the WPS server from the customer’s cellular telephone. Additionally, the only customer unique data that has been transmitted to the WPS server is the “User ID.” Kumar fails to identify what the “User ID” *is*, other than a means of identifying the particular individual. For example, the User ID may be a random numeric sequence. Nonetheless, the User ID is *customer* specific, not *transaction* specific.

After the transaction record is generated, the WPS server communicates with a bank computer. (Id. at paragraph 40 and FIG. 3B step 328). If the customer has sufficient funds or credit available, the bank computer approves the transaction. (Id. at paragraph 40 and FIG. 3B step 348). Therefore, no additional data is received from the merchant terminal prior to approval. Additionally, the transaction is approved prior to any communication whatsoever between the customer’s cellular telephone and any component in the system disclosed by Kumar.

After approval for the transaction has been obtained, Kumar discloses that transaction information is sent to the cellular telephone of the customer for acceptance or rejection of the bank approved transaction. (Id. at paragraphs 41 and 49 and FIG. 3B step 352). Accordingly, at paragraph 41, the customer confirms an intent to make a purchase by keying in “an affirmation code, such as the letter “Y” (phone keypad number “9”) and keying in her PIN.” (Kumar at paragraph 41). The letter “Y” is generic to any transaction. Likewise, the user’s PIN is not unique to a specific transaction.

Thus, Kumar discloses a system wherein a transaction record is generated and approved prior to any link being established with a customer's cellular telephone. Only after the approval is obtained, is a link established with the customer's cellular telephone with the purpose of confirming the customer's request for approval of the transaction. This link originates at the WPS server, not the consumer's cellular telephone. Additionally, no transaction specific information is transmitted from the consumer's cellular telephone.

Discussion Re: Patentability of Claim 1

1. Claim 1

Claim 1, as amended, recites:

A system for supporting consumer transactions billed to an account through a cellular telephone comprising:

- a merchant data receiver for receiving merchant transaction data from a merchant terminal at a transaction site;
- a consumer data receiver for receiving consumer transaction data from a cellular telephone of a consumer at the transaction site; and
- a transaction processor for processing the merchant transaction data and the consumer transaction data to access a financial account so that approval for a transaction at the transaction site may be obtained and for generating a transaction record using the merchant transaction data and the consumer transaction data.

Claim 1 thus recites a transaction processor that processes two received inputs from two different devices, that is, a transaction related input from a *terminal* and a transaction related input from a *cellular phone*, to generate a transaction record.

2. Kumar Does Not Use Input From a Cellular Telephone to Generate a Transaction Record

Claim 1 has been amended to more clearly distinguish over the prior art. As discussed above, Kumar uses merchant data and a User ID to generate a transaction

record. The system disclosed by Kumar, however, generates the transaction record based solely upon the communication received from the point of sale device 30. (Kumar at paragraph 38).

In other words, in order for the system of Kumar to work, the User ID *must* be provided to the merchant and transmitted from the merchant terminal. Thus, the User ID is referred to as “semi-public number because it is given to the merchant ... to identify the customer. (Kumar at paragraph 10). Additionally, only after the transaction record is generated and bank approval is obtained is there a need for a link between the WPS server and the cellular telephone.

In contrast, claim 1 does not require *any* customer data to be given to the merchant. Rather, customer data is transmitted through the customer’s cellular telephone to the system. Therefore, a link must be established between the cellular telephone and the system in order for the transaction processor to generate the transaction record. Accordingly, even assuming that the User ID of Kumar is “consumer transaction data,” the User ID is not transmitted through the customer’s cellular telephone. Thus, Kumar does not disclose a transaction processor as recited in claim 1 as amended.

Therefore, the Applicant respectfully submits that the rejection of claim 1 as being anticipated by Kumar has been overcome.

Discussion Re: Patentability of Claims 2 and 3

Claims 2 and 3 depend from claim 1 and include the limitations discussed above with respect to claim 1 and additional limitations. Accordingly, for at least the same

reasons set forth above with respect to claim 1, claims 2 and 3 are patentable over the prior art.

Discussion Re: Patentability of Claim 8

Claim 8, as amended, recites:

A system for supporting transactions billed to an account associated with a cellular telephone comprising:
a merchant terminal for generating and sending merchant transaction data over a first communication link;
a consumer data receiver for receiving over a second communication link consumer transaction data from a cellular telephone at the transaction site; and
a transaction processor for processing the merchant transaction data and the consumer transaction data to access a financial account so that approval for a transaction at the transaction site may be obtained and for generating a transaction record using the merchant transaction data and the consumer transaction data.

Claim 8, as amended, thus recites a transaction processor that processes data from *two different links* from the transaction site to *generate a transaction record*. As set forth above, Kumar does not disclose generating a transaction record from data received from a customer's cellular telephone. The transaction record of Kumar is generated using data solely from the merchant terminal. Accordingly, for at least the same reasons as set forth above with respect to claim 1, the Applicant respectfully submits that claim 8, as amended, is patentable over the prior art.

Discussion Re: Patentability of Claims 9 and 10

Claims 9 and 10 depend from claim 8 and include the limitation discussed above with respect to claim 8 and additional limitations. Accordingly, for at least the same reasons set forth above with respect to claim 8, claims 9 and 10 are patentable over the prior art.

Discussion Re: Patentability of Claim 15

Claim 15, as amended, recites:

A method for supporting payment of a consumer transaction through an account associated with a cellular telephone comprising:
receiving consumer cellular telephone data from a communications link including the consumer cellular telephone;
generating a transaction record from merchant transaction data and the consumer cellular telephone data;
querying for payment through an account associated with the cellular telephone data using the generated transaction record; and
generating an approval code in correspondence with a response to the query for payment through the account associated with the cellular telephone data.

Claim 15 thus recites generating a transaction record from cellular telephone data and using the transaction record to obtain approval for the transaction. As discussed above with respect to claim 1, Kumar does not use any data that is passed over a customer's cellular telephone to generate a transaction record. Accordingly, even assuming that the User ID of Kumar is "consumer cellular telephone data," the User ID is not transmitted through the customer's cellular telephone. Thus, Kumar does not disclose generating a transaction record as recited in claim 15.

Accordingly, the Applicant respectfully submits that claim 15, as amended, is patentable over the prior art.

Discussion Re: Patentability of Claims 16 and 17

Claims 16 and 17 depend from claim 15 and include the limitation discussed above with respect to claim 15 and additional limitations. Accordingly, for at least the same reasons set forth above with respect to claim 15, claims 16 and 17 are patentable over the prior art.

Discussion Re: Patentability of Claim 21

1. Claim 21

Claim 21, as amended, recites:

A method of processing data used to obtain approval for a payment associated with a transaction comprising:
receiving from a merchant terminal at a transaction site merchant transaction data;
receiving from a cellular telephone associated with a consumer at the transaction site consumer transaction data identifying the transaction;
correlating the received merchant transaction data and the received consumer transaction data identifying the transaction; and
using the correlated data to obtain approval to charge a payment associated with the transaction to an account associated with the cellular telephone.

Claim 21, as amended, thus recites using consumer transaction data received from a cellular telephone associated with a consumer that identifies a specific transaction to obtain approval for the transaction.

2. Kumar Only Transmits Generic Data

The only information that is transmitted by the customer's cellular telephone in the system of Kumar is generic data. Specifically, at paragraph 41, the customer confirms an intent to make a purchase by keying in "an affirmation code, such as the letter "Y" (phone keypad number "9") and keying in her PIN." (Kumar at paragraph 41). The letter "Y" is generic to any transaction. Likewise, the user's PIN is not unique to a specific transaction. Accordingly, Kumar does not disclose transmission of consumer transaction data that *identifies a specific transaction* over a cellular telephone associated with the consumer.

Accordingly, the Applicant respectfully submits that claim 21, as amended, is patentable over the prior art.

Discussion Re: Patentability of Claims 22 and 23

Claims 22 and 23 depend from claim 21 and include the limitation discussed above with respect to claim 21 and additional limitations. Accordingly, for at least the same reasons set forth above with respect to claim 21, claims 22 and 23 are patentable over the prior art.

Discussion Re: Patentability of Claim 24

1. Claim 24

Claim 24, as amended, recites:

A system for supporting consumer transactions billed to an account through a cellular telephone comprising:
a merchant data receiver for receiving merchant transaction data from a merchant terminal at a transaction site over a first communications link;
a consumer data receiver for receiving an incoming call from a consumer cellular telephone at the transaction site over a second communications link and for receiving data from the consumer cellular telephone; and
a transaction processor for processing the merchant transaction data and the consumer transaction data to access a financial account so that approval for a transaction at the transaction site may be obtained.

Claim 24, as amended, thus recites a system configured to receive an incoming telephone call from a consumer cellular telephone and to receive data from the cellular telephone to receive approval for a transaction.

2. Kumar Does Not Receive a Cellular Telephone Call From a Consumer

The communication link between the WPS server and the consumer's cellular telephone in Kumar is initiated by the WPS server, not by the cellular telephone.

Specifically, at paragraph 41, once the system is "BankApproved," the "WPS server

sends an SMS or IVR message to the mobile phone.” (Kumar at paragraph 41). In contrast, claim 24 requires the consumer to initiate the telephone call. Accordingly, the Applicant respectfully submits that claim 24, as amended, is patentable over the prior art.

III. 35 U.S.C. § 103 Rejections

Claims 4-5, 7, 11-12, 14, 18 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kumar in view of U.S. Patent Publication No. US 2004/0076275 of Katz (hereinafter “Katz ”).¹

Reconsideration of these claims in view of the forgoing amendments and the following remarks is respectfully requested.

Discussion Re: Patentability of Claim 4

1. Claim 4

Claim 4 states:

A terminal for supporting consumer transactions billed through an account through a cellular telephone comprising:
a transaction data generator for generating transaction data; and
a transaction data display for displaying the generated transaction data with a telephone number so that a consumer may call the telephone number to bill a transaction corresponding to the generated transaction data to an account associated with a cellular telephone number.

¹ The Applicant does not admit that Katz is prior art with respect to the present application. The present application has a filing date of July 25, 2001 while Katz was not filed until October 16, 2003. Nonetheless, Katz is a continuation in part of an application filed on January 27, 1994 which issued as U.S. Patent No. 6,323,894 on November 27, 2001. The ‘894 patent appears to include the same discussion relied upon by the Examiner in rejecting the present claims. Accordingly, the teaching of Katz relied upon by the Examiner is discussed herein.

Claim 4 thus recites a terminal with a display that allows a user to view a telephone number to call in order to pay for a product using an account associated with a cellular telephone number.

2. There is No Motivation for the Proposed Modification

The Examiner admitted that Kumar fails to disclose each element of claim 4 but alleged that the missing element could be found in Katz. (Office Action at page 7). Because there is no motivation for the proposed combination, even assuming that Katz is prior art, the rejection should be withdrawn.

Specifically, the Examiner has alleged that the motivation to combine the teachings of Kumar with the teaching of Katz is “to consummate with the resulting transaction data stored.” (Office Action at page 7). The system of Kumar as disclosed, however, already provides for both completing a purchase and confirming the transaction. At paragraph 43 of Kumar, the transaction is approved and a receipt is generated. “This completes the transaction and customer 50 walks away happily.” (Kumar at paragraph 44).

More specifically, the transaction is completed because the WPS server initiates a telephone call to a consumer’s cellular telephone. (Kumar at paragraph 43). Accordingly, there is no need to display the telephone number of the WPS server to the customer, since the WPS server initiates the call.

Therefore, while motivation to combine references may be found in an advantage arising from the combination, there can be no advantage from the proposed combination when the alleged advantage is *already achieved* in the system which the Examiner

proposes to modify. Accordingly, the Examiner has failed to identify a legally cognizable motivation for the combination of Kumar and Katz.

3. Conclusion

Therefore, for any or all of the above reasons, a *prima facie* case of obviousness has not been established with respect to claim 4. Accordingly, the Examiner is respectfully requested to withdraw this rejection of claim 4.

Discussion Re: Patentability of Claims 5 and 7

Claims 5 and 7 were rejected based upon the same combination discussed above with respect to claim 4. Claims 5 and 7 depend from claim 4 and include the limitation discussed above with respect to claim 4 and additional limitations. Accordingly, for at least the same reasons set forth above with respect to claim 4, claims 5 and 7 are patentable over the prior art.

Discussion Re: Patentability of Claim 11

1. Claim 11

Claim 11 recites:

The system of claim 8, the merchant terminal further comprising:
a transaction data generator for generating transaction data; and
a transaction data display for displaying the generated transaction data with a telephone number so that a consumer may call the telephone number to bill a transaction corresponding to the generated transaction data to an account associated with a cellular telephone number.

Claim 11 thus includes the limitation added by the above discussed amendment of claim 8.

2. The Discussion of Claim 1 Applies

The Examiner has rejected claim 11 based primarily upon Kumar with reliance on Katz for teaching the display of a telephone number. (Office Action at page 7).

Accordingly, Katz fails to correct the deficiencies discussed above regarding the elements of claim 8, as amended. Therefore, the Applicant submits that the rejection of claim 11 has been overcome. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 11.

3. The Discussion of Claim 4 Applies

Moreover, the proposed motivation for the combination of Kumar and Katz with respect to claim 11 is the same as that discussed above with respect to claim 4.

Accordingly, for the same reasons set forth above with respect to claim 4, there is no motivation for the proposed combination of Kumar and Katz with respect to claim 11.

Therefore, while motivation to combine references may be found in an advantage arising from the combination, there can be no advantage from the proposed combination when the alleged advantage is *already achieved* in the system which the Examiner proposes to modify. Thus, the Examiner has failed to identify a legally cognizable motivation for the combination of Kumar and Katz.

4. Conclusion

For any or all of the foregoing reasons, it is respectfully submitted that there is no motivation for modifying Kumar with Katz as proposed. Moreover, modification of

Kumar in view of Katz fails to arrive at the invention of claim 11. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 11.

Discussion Regarding Claim 12

Claim 12 depends from claim 11 and includes the limitations discussed above with respect to claim 11 and additional limitations. Accordingly, for at least the same reasons set forth above with respect to claim 11, claim 12 is patentable over the prior art.

Discussion Re: Patentability of Claim 14

Claim 14 depends from claim 13 and includes the limitations of claim 13 and additional limitations. Accordingly, because the Examiner has indicated that claim 13 includes patentable subject matter, the Applicant respectfully submits that claim 14 is patentable over the prior art.

Discussion Re: Patentability of Claim 18

1. Claim 18

Claim 18 recites:

The method of claim 16 further comprising:
displaying a telephone number for payment processing at the transaction site so a consumer may call the telephone number with a cellular phone to pay for the consumer transaction through an account associated with the cellular phone.

Claim 18 thus depends from claim 16 which in turn depends from claim 15.

Therefore, claim 18 includes the limitation added by the above discussed amendment of claim 15.

2. The Discussion of Claim 15 Applies

The Examiner has rejected claim 18 based primarily upon Kumar with reliance on Katz for teaching the display of a telephone number. (Office Action at page 8).

Accordingly, Katz fails to correct the deficiencies discussed above regarding the elements of claim 15, as amended. Therefore, the Applicant submits that the rejection of claim 18 has been overcome. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 18.

3. The Discussion of Claim 4 Applies

Moreover, the proposed motivation for the combination of Kumar and Katz with respect to claim 18 is the same as that discussed above with respect to claim 4.

Accordingly, for the same reasons set forth above with respect to claim 4, there is no motivation for the proposed combination of Kumar and Katz with respect to claim 18.

Therefore, while motivation to combine references may be found in an advantage arising from the combination, there can be no advantage from the proposed combination when the alleged advantage is *already achieved* in the system which the Examiner proposes to modify. Thus, the Examiner has failed to identify a legally cognizable motivation for the combination of Kumar and Katz.

4. Conclusion

For any or all of the foregoing reasons, it is respectfully submitted that there is no motivation for modifying Kumar with Katz as proposed. Moreover, modification of

Kumar in view of Katz fails to arrive at the invention of claim 18. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 18.

Discussion Re: Patentability of Claim 25

1. Claim 25

Claim 25 recites:

The system of claim 24, further comprising:
a display for displaying a telephone number so that a consumer may call the telephone number to bill the transaction to an account associated with a telephone number associated with the cellular telephone.

Claim 25 thus depends from claim 24 and includes the limitation added by the above discussed amendment of claim 24.

2. The Discussion of Claim 24 Applies

The Examiner has rejected claim 25 based primarily upon Kumar with reliance on Katz for teaching the display of a telephone number. (Office Action at page 8). Accordingly, Katz fails to correct the deficiencies discussed above regarding the elements of claim 24, as amended. Therefore, the Applicant submits that the rejection of claim 25 has been overcome. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 25.

3. The Discussion of Claim 4 Applies

Moreover, the proposed motivation for the combination of Kumar and Katz with respect to claim 25 is the same as that discussed above with respect to claim 4.

Accordingly, for the same reasons set forth above with respect to claim 4, there is no motivation for the proposed combination of Kumar and Katz with respect to claim 25.

Therefore, while motivation to combine references may be found in an advantage arising from the combination, there can be no advantage from the proposed combination when the alleged advantage is *already achieved* in the system which the Examiner proposes to modify. Thus, the Examiner has failed to identify a legally cognizable motivation for the combination of Kumar and Katz.

4. Conclusion

For any or all of the foregoing reasons, it is respectfully submitted that there is no motivation for modifying Kumar with Katz as proposed. Moreover, modification of Kumar in view of Katz fails to arrive at the invention of claim 25. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 25.

IV. Claims 6, 13, 19 and 20

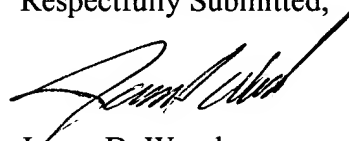
The Examiner has indicated that claims 6, 13, 19 and 20 would be patentable if rewritten to remove any dependence on rejected claims. Applicant respectfully submits that in view of the foregoing amendments and remarks, claims 6, 13, 19 and 20 are patentable without further modification.

V. Conclusion

Applicant respectfully requests entry of the amendments and favorable consideration of the application.

A prompt and favorable action on the merits is requested.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "James D. Wood", written over a horizontal line.

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